

1 HENRI E. NORRIS, ESQ, DC Bar# 370646
2 GEORGE HOLLAND Jr. ESQ SB#216735
3 **HOLLAND LAW FIRM**
4 1970 Broadway, Suite 1030
5 Oakland, CA 94612
6 Telephone (510) 465-4100
7 Fax: (510) 465-4747
8 Attorney for Debtors

9
10
11 **UNITED STATES BANKRUPTCY COURT**
12 **EASTERN DISTRICT OF CALIFORNIA**
13
14

15 IN RE:

16 JOHN W. KRAMER

17 Debtor

) Case No. 10-90883

) CHAPTER 13

)

)

)

)

) **EMERGENCY EX PARTE MOTION FOR**
) **AN ORDER VACATING AND SETTING**
) **ASIDE THE DISMISSAL FOR DEBTOR'S**
) **CHAPTER 13 PETITION; DECLARATION**
) **OF HENRI E. NORRIS IN SUPPORT**
) **THEREOF**

)

) DATE:

) TIME:

CRTRM:

20
21
22 TO THE HONORABLE ROBERT S BARDWILL, UNITED STATES BANKRUPTCY
23 JUDGE, RUSSELL D. GREER, US Trustee, AND ALL PARTIES OF INTEREST;

24
25 The Debtor, by and through Counsel of Record, hereby moves this Court, on an
26 emergency basis, for an Order setting aside and vacating the dismissal of Debtor's Chapter 13
27 Case. On April 1, 2010, or as soon as thereafter as the matter may be heard, move for an order
28 Setting aside and vacating the dismissal of above captioned petition.

- 1 1. This Court has jurisdiction over this matter pursuant to U.S.C. Section 109 and 349 and
2 Rules 8002, 9006, 9013, 9022 and 9024 of the Federal Rules of Bankruptcy Procedures.
3 And pursuant to FED. R. CIV. P. 59 (e) & FED. R. CIV. P. 60(b) of the order of the
4 Court dated March 30, 2010, a copy of which was received by the Debtor.
5
6 2. Movant is the Debtor in the Chapter 7 Bankruptcy captioned herein.
7

8 Respectfully Submitted,

9 /s/ Henri E. Norris /s/ George Holland Jr.
10 Henri Norris,ESQ; George Holland Jr., ESQ
11 HOLLAND LAW FIRM
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **UPON SHOWING OF GOOD CAUSE THE COURT MAY ON ITS OWN DISCRETION**
4 **ORDER THE PERIOD REDUCED**

5 Rule 9006 of the Bankruptcy Rules provides, in its most pertinent part, as follows:

6 *“When an act is required to be done at or within a specified time by*
7 *these rules or by notice given there under or by the order of the court, the court*
8 *for cause shown may on its own discretion, with or without motion or notice,*
9 *order the period reduced.”*

10 Local Bankruptcy Rule 9075, et seq, provides that:

11 *“For cause shown, a party may request emergency motion to be heard*
12 *on notice shorter than would otherwise be required by the Local Bankruptcy*
13 *Rules.”*

14 The urgency in this case is debtor is in the process of fighting a foreclosure/eviction and
15 needs the Protection of 11 U.S.C. § 362(a) allowing for an Automatic Stay so that the Movant
16 will be given the relief it so badly needs to restructure her finances, and cure a default if at all
17 possible in a reasonable period of time. Allowing the foreclosure eviction will forever harm the
18 Movant without recourse if the property is lost.

19 **II.**

20 **DUE TO MISTAKE, INADVERTANCE, SURPRISE OR NEGLIGENCE, THE MOTION**
21 **SHOULD BE GRANTED**

- 22
- 23 1. Bankruptcy Rules 9024 provides that Federal Rules of Civil Procedure 60 applies in
- 24 cases under the Code.
- 25 2. Debtor request that this Honorable Court consider that Debtor’s default was not the
- 26 Debtor’s intention but that their counsel inadvertently uploaded the wrong document.
- 27 Because of this administrative error, the deadline for submitting the schedules and
- 28

1 required supporting documents were missed by counsel and the error was not the fault of
2 the Debtor. Rule 60 (B) (1) of the FED. R. CIV. P. allows a relief from Judgment, Order
3 or Proceeding.

4 On Motion and just terms, the court may relieve a party or its legal representative
5 from a final judgment, order or proceeding for the following reasons:
6 (1) mistake, *inadvertence*, surprise, or excusable neglect;

- 7 3. As a general rule, courts have treated a timely motion for Vacating and setting aside the
8 dismissal as a motion to alter or amend a judgment *Scott v. Younger* 739 F.2.d 1464. 166-
9 167 (9th Cir.1984); *Bestran Corp v. Eagle Comtronics, Inc.*, 720 F.2.d 1019 (9th Cir.1983).
10 According to F.R.C.P 59(e), a motion to alter or amend a judgment must be served no
11 later than 10 days after entry of judgment. Since the order was entered on March 26,
12 2010, This motion is being filed in a timely manner under FED. R. CIV. P. 59(e).
13
14 4. The Debtor would like the court to reconsider this motion which is timely filed pursuant
15 to Federal Rule of Civil Procedure Rule 60 (C) (1) and it is being made within a
16 reasonable time – and for reasons (1), (2) and (3) are no more than a year after the entry
17 of the judgment or order or the date of the proceeding.
18
19 5. Debtors Chapter 13 Petition was dismissed pursuant to 11 U.S.C. 109(h) because
20 counsel, inadvertently failed to file the supporting documents and schedules on time due
21 to an administrative error.
22
23 6. The Debtors have a legitimate petition under Bankruptcy Case Number 10-90883 and in
24 the interest of justice and fair play, Debtor's request this court to allow them to proceed
25 with their petition and avail of the Automatic Stay Protection as afforded by Section
26 362(a) of the Federal Rules of Bankruptcy Procedure.
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CONCLUSION

WHEREFORE, All premises duly considered, Debtors respectfully moves this Honorable Court, that Debtor's Motion for Order setting aside and vacating the Dismissal of the Chapter 13 case be Granted.

Dated this 1st day of April, 2010

Respectfully Submitted,

/s/Henri E. Norris /s/ George Holland Jr.
Henri E. Norris, ESQ; George Holland Jr., ESQ
Attorney for Debtor

1 HENRI E. NORRIS, ESQ, DC Bar# 370646
2 GEORGE HOLLAND Jr. ESQ SB#216735
3 **HOLLAND LAW FIRM**
4 1970 Broadway, Suite 1030
5 Oakland, CA 94612
6 Telephone (510) 465-4100
7 Fax: (510) 465-4747
8 Attorney for Debtors
9

10
11 **UNITED STATES BANKRUPTCY COURT**
12 **EASTERN DISTRICT OF CALIFORNIA**
13

14 IN RE:

15 JOHN W. KRAMER

16 Debtor

) Case No. 10-90883

) CHAPTER 13

)

)

)

) **DECLARATION OF HENRI E. NORRIS**

)

) DATE:

) TIME:

) CRTRM:

)

)

)

)

)

17
18
19
20
21 I, HENRI E. NORRIS, declare under penalty of perjury as follows:

22
23 That I am an Attorney at law duly licensed to practice law before the Courts in the
24 District of Columbia and in the United States District Court for the Central District of
25 California. I am the attorney of record, working under the Holland Law Firm, for the
26 Chapter 7 Debtor Leticia B. Ramos.

27
28 On March 11, 2010, I filed the "skeleton" Chapter 13 petition on behalf of the debtor.

1 Attached as part of this as (EXHIBITS) are the schedules and plans as required to
2 complete the petition which Debtor and counsel have completed but Counsel and staff
3 inadvertantly failed to file.

4 As can be shown on the documents, the debtor and Office of Counsel completed the
5 paperwork that was dated March 12, 2010. Due to scheduling and clerical errors, the
6 schedules and supporting documents as well as declarations were not uploaded into the case
7 docket and subsequently an order to dismiss was issued by the Courts on March 30, 2010.
8

9 The urgency in this case is the debtor is under the protection of an Automatic Stay under
10 Rule 362 from an imminent Foreclosure/Unlawful Detainer. If this Motion is not granted, the
11 debtor and her family and children will lose the protection that would allow her to be left out
12 in the streets with no place to stay.
13

14 I declare under penalty of perjury that the foregoing is true and correct and if called to
15 testify, I would and could do so competently. This declaration was executed on the 1st day of
16 April, 2010 in Oakland, California.
17
18
19
20
21

22 Respectfully Submitted,

23 /s/ Henri E. Norris
24 Henri Norris, Declarant
25
26
27
28